

NEBRASKA ADMINISTRATIVE CODE

Last Issue Date: April 7, 1999

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 27 – SPECIFICITY REGARDING USE OF PROCEEDS

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120(3) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to specificity in the use of proceeds is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case by case basis, and with prior written notice to the affected persons, require adherence to additional standards or policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 2 shall apply to the provisions of this Rule, unless otherwise specified.

002 CONDITIONS. A registration statement not complying with the requirements of this Rule may be denied registration by the Director.

003 USE OF PROCEEDS. The issuer's prospectus shall disclose, in tabular form, for both the minimum and maximum amounts proposed, if applicable, the percentages and dollar amounts of the following:

003.01 The estimated cash proceeds to be received by the issuer from the offering;

003.02 The purposes for which the proceeds are to be used by the issuer;

003.03 The amount to be used for each purpose; and

003.04 The order or priority in which the proceeds will be used for the purposes stated.

004 OTHER SOURCES OF FINANCING. The issuer's prospectus shall disclose:

004.01 The amounts of any funds to be raised from other sources to achieve the purposes stated, whether the sources are firm or contingent, and any contingencies;

004.02 The sources of any such funds, whether the sources are firm or contingent, and any contingencies;

004.03 If any part of the proceeds is to be used to acquire any property (including goodwill) other than in the ordinary course of business:

004.03A The names and addresses of the vendors,

004.03B The purchase price,

004.03C The names of any persons who have received commissions in connection with the acquisition, and

004.03D The amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition); and

004.04 The amount and basis for any proceeds used to pay indebtedness, including unpaid salaries, to promoters.

005 RESERVE FOR WORKING CAPITAL. The issuer normally may not reserve more than fifteen percent (15%) of the proceeds for working capital, for general corporate purposes, or for any other unspecified use. In the event the issuer's business plans require greater flexibility in the use of unspecified proceeds, the issuer must:

005.01 Disclose all potential uses of such proceeds with qualifying language that such uses may be subject to change; and

005.02 Indicate the specific circumstances leading to reallocation and the potential areas of reallocation.

006 SUFFICIENCY OF PROCEEDS.

006.01 The issuer must demonstrate that the offering proceeds, together with all other sources of financing currently available to the issuer, are sufficient to sustain the issuer's proposed activities.

006.02 If the proceeds are insufficient to sustain the issuer's activities for at least 12 months following the offering, the issuer must provide the appropriate risk disclosure in the prospectus.

007 IMPOUNDMENT OF PROCEEDS. In the event the offering is not firmly underwritten, the issuer must set a minimum amount of proceeds to be raised consistent with the business plan set forth in the prospectus.

007.01 The proceeds from the offering must be impounded until the minimum amount is reached.

007.02 The prospectus must disclose if officers, directors or other promoters have the right to purchase shares for the purpose of meeting the impound requirements.

008 WAIVER OF RULE. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain provisions of this Rule may be waived by the Director.